

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

NICK MAKREAS,

No. C-11-2406 MMC

Plaintiff,

v.

THE MOORE LAW GROUP, A.P.C., et al.,

Defendants.

**ORDER GRANTING IN PART AND
DENYING IN PART MOORE LAW
GROUP'S MOTION TO DISMISS;
GRANTING CITIBANK'S MOTION TO
DISMISS; AFFORDING PLAINTIFF
LEAVE TO FILE SECOND AMENDED
COMPLAINT; CONTINUING CASE
MANAGEMENT CONFERENCE**

Before the Court are two motions to dismiss, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the First Amended Verified Complaint ("FAC") filed by plaintiff Nick Makreas ("Makreas"): (1) defendant The Moore Law Group, A.P.C.'s ("Moore") motion to dismiss, filed September 1, 2011; and (2) defendant Citibank (South Dakota), N.A.'s ("Citibank") motion to dismiss, filed September 1, 2011. Makreas, who proceeds pro se, has filed opposition to each motion; each defendant has filed a reply. Having read and considered the papers filed in support of and in opposition to the motions, the Court rules as follows.¹

LEGAL STANDARD

Dismissal under Rule 12(b)(6) can be based on the lack of a cognizable legal theory

¹By order filed October 4, 2011, the matters were taken under submission.

1 or the absence of sufficient facts alleged under a cognizable legal theory. See Balistreri v.
2 Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990). Rule 8(a)(2), however, “requires
3 only ‘a short and plain statement of the claim showing that the pleader is entitled to relief.’”
4 See Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Fed. R. Civ. P.
5 8(a)(2)). Consequently, “a complaint attacked by a Rule 12(b)(6) motion to dismiss does
6 not need detailed factual allegations.” See id. Nonetheless, “a plaintiff’s obligation to
7 provide the grounds of his entitlement to relief requires more than labels and conclusions,
8 and a formulaic recitation of the elements of a cause of action will not do.” See id. (internal
9 quotation, citation, and alteration omitted).

In analyzing a motion to dismiss, a district court must accept as true all material allegations in the complaint, and construe them in the light most favorable to the nonmoving party. See NL Industries, Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986). “To survive a motion to dismiss, a complaint must contain sufficient factual material, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Twombly, 550 U.S. at 570). “Factual allegations must be enough to raise a right to relief above the speculative level[.]” Twombly, 550 U.S. at 555. Courts “are not bound to accept as true a legal conclusion couched as a factual allegation.” See Iqbal, 129 S. Ct. at 1950 (internal quotation and citation omitted).

Generally, a district court, in ruling on a Rule 12(b)(6) motion, may not consider any material beyond the complaint. See Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555 n. 19 (9th Cir. 1990). Documents whose contents are alleged in the complaint, and whose authenticity no party questions, but which are not physically attached to the pleading, however, may be considered. See Branch v. Tunnell, 14 F.3d 449, 454 (9th Cir. 1994).

DISCUSSION

A. Moore's Motion to Dismiss

1. First Cause of Action

28 In the First Cause of Action, Makreas alleges Moore violated two provisions of the

1 Fair Debt Collections Practice Act (“FDCPA”), 15 U.S.C. §§ 1692-1692p. The Court
 2 considers in turn each of the provisions on which Makreas relies.

3 **a. 15 U.S.C. § 1692g(a)**

4 Pursuant to § 1692g(a), a debt collector must “send” a debtor, within five days of the
 5 debt collector’s “initial communication” with the debtor, a written notice containing certain
 6 information. See 15 U.S.C. § 1692g(a). Makreas alleges Moore left him a “voice mail
 7 message” on April 7, 2011, and that “six days later,” i.e., April 13, 2011, he “received a
 8 letter from Moore claiming that [Makreas] owed them a debt.” (See FAC ¶ 34.) Makreas
 9 alleges the letter was not timely under § 1692g(a).²

10 As noted, Makreas alleges he “received” the letter six days after the April 7, 2011
 11 voice message (see FAC ¶¶ 30, 31); consequently, even assuming the April 7, 2011 voice
 12 message was an “initial communication,”³ the letter had to have been placed in the mail,
 13 i.e., “sent,” no later than April 12, 2011, and thus within the requisite five days after such
 14 “initial communication.”

15 Accordingly, to the extent the First Cause of Action is based on an alleged violation
 16 of § 1692g(a), the First Cause of Action will be dismissed without leave to amend.

17 **b. 15 U.S.C. § 1692e(11)**

18 The FDCPA prohibits “any false, deceptive, or misleading representation or means
 19 in connection with the collection of any debt.” See 15 U.S.C. § 1692e. Prohibited
 20 representations and means include “[t]he failure to disclose in the initial written
 21 communication with the consumer and, in addition, if the initial communication with the
 22 consumer is oral, in that initial oral communication, that the debt collector is attempting to
 23 collect a debt and that any information obtained will be used for that purpose, and the
 24 failure to disclose in subsequent communications that the communication is from a debt

25
 26 ²Makreas does not allege the content of the letter failed to comply with § 1692g(a);
 27 rather, he challenges only the timeliness of the letter.

28 ³As discussed below, Makreas fails to allege sufficient facts to support a finding that
 the April 7, 2011 voice message was an “initial communication.”

1 collector" See 15 U.S.C. § 1692e(11). A "communication," for purposes of the
 2 FDCPA, is "the conveying of information regarding a debt directly or indirectly to any
 3 person through any medium." See 15 U.S.C. § 1692a(2).

4 Makreas alleges he received thirteen "voice mail messages" from Moore, the first of
 5 which was left on April 7, 2011 and the last on which was left on May 4, 2011. (See FAC
 6 ¶ 34.) Each message, according to Makreas, consisted of the caller's stating her first and
 7 last name, a statement that she was "calling from the Moore Law Group for Nick Makreas,"
 8 and a request that Makreas "please return [her] call" at a specified phone number and
 9 extension. (See FAC Ex. A.) Makreas alleges the messages violated the FDCPA
 10 because, according to Makreas, they did not include the disclosure(s) required by
 11 § 1692e(11).

12 In seeking dismissal of said claim, Moore does not argue that any of the messages
 13 included the information required by § 1692e(11), but, rather, that the messages were not
 14 "communications" as defined in § 1692a(2).

15 A voice message can, under some circumstances, constitute a "communication." In
 16 Foti v. NCO Financial Systems, Inc., 424 F. Supp. 2d 643 (S.D. N.Y. 2006), for example,
 17 the district court considered a voice message stating it was from "NCO Financial Systems"
 18 about "a personal business matter" and requesting the recipient return the call; the district
 19 court found the message was a "communication," reasoning the call "indirectly convey[ed]
 20 information about [a] debt" because the listener was "familiar with the fact that NCO
 21 Financial Systems is a debt collector." See id. at 648, 658. As another example, in
 22 Anchondo v. Anderson, Crenshaw & Associates, LLC, 583 F. Supp. 2d 1278 (D. N.M.), the
 23 district court considered a voice message that "conveyed information regarding 'an
 24 important matter' pertaining to 'reference number 423635' and [plaintiff's] 'account,'" and
 25 held such message would constitute a "communication" if the plaintiff were able to
 26 establish "the reference number or the account in question pertained to a debt," see id. at
 27 1281-82.

28 Here, as noted above, in addition to leaving voice messages, Moore is alleged to

1 have sent Makreas a letter stating Makreas owed Moore "a debt." (See FAC ¶ 31.)
 2 Makreas alleges some of the voice messages were left before he received the letter and
 3 others were left after he received the letter. (See FAC ¶¶ 30, 31, 34.)

4 With respect to the messages left after Makreas received Moore's letter, the Court,
 5 at the pleading stage, cannot conclude Makreas is unable to establish such messages
 6 were "communications," given that, shortly before he heard those messages, he had
 7 received a letter from Moore in which Moore informed him that he owed Moore a debt.⁴
 8 Under such circumstances, subsequent voice messages from Moore requesting that
 9 Makreas phone Moore could, arguably, be understood as indirectly conveying information
 10 about the debt to which Moore had referred in its letter.⁵

11 With respect to the messages left before Makreas received Moore's letter, however,
 12 Makreas has failed to allege sufficient facts to support a finding such messages constituted
 13 "communications" as defined by § 1692a(2). Makreas does not allege he was familiar with
 14 Moore prior to his receiving the above-referenced letter, or that he otherwise would have
 15 had any reason to know Moore was contacting him about a debt.

16 Accordingly, the First Cause of Action will be dismissed to the extent it alleges a
 17 violation of § 1692g(a) and is based on voice messages left prior to Makreas's receipt of
 18 Moore's letter, and will not be dismissed to the extent such cause of action is based on
 19 voice messages left after receipt of said letter.

20 The Court will afford Makreas leave to amend to allege, if he can, any facts, as
 21

22 ⁴Although Makreas does not indicate what, if any, other information was included in
 23 the letter, the letter, as described by Makreas in the FAC, was a "communication" within the
 24 meaning of § 1692a(2), and, indeed, constituted the "initial communication" between Moore
 25 and Makreas. Consequently, in any further "communication," Moore was required to
 26 identify itself as a "debt collector." See 15 U.S.C. § 1692e(11).

27 ⁵The Court notes that the Ninth Circuit, in considering a prior version of § 1692e(11),
 28 held that where a debtor received "a follow up notice which only demand[ed] a payment as
 earlier requested," such "follow up notice" was not a "communication" within which the
 disclosure required by 15 U.S.C. § 1692e(11) must be made." See Pressley v. Capital
 Credit & Collection Service, Inc., 760 F.2d 922, 925 (9th Cir. 1985). The parties to the
 instant action have not addressed the possible applicability of Pressley to Makreas's
 § 1692e(11) claim.

1 opposed to legal conclusions, to support his allegation that the voice messages left prior to
2 the date on which he received Moore's letter constitute "communications" for purposes of
3 the FDCPA.

4 **2. Second Cause of Action**

5 In the Second Cause of Action, Makreas alleges Moore violated the Fair Credit
6 Reporting Act ("FCRA"), 15 U.S.C. §§ 1681-1681x, by accessing his credit report for
7 improper purposes and by providing incorrect information to credit reporting agencies.
8 Moore contends Makreas has failed to state a claim under either theory. The Court
9 agrees.

10 The Court previously dismissed Makreas's improper-access claim as alleged in the
11 initial complaint, for the reason that Makreas had failed to allege any facts to support his
12 conclusory allegation of improper access. Moreover, the Court, noting Makreas had
13 alleged Moore was attempting to collect a debt, noted the FCRA expressly permits a
14 person or entity to obtain a credit report for use "in connection with a credit transaction
15 involving the consumer on whom the information is to be furnished and involving the . . .
16 collection of an account of [] the consumer." See 15 U.S.C. § 1681b(a)(3)(A). In the FAC,
17 Makreas again fails to allege any facts to support his conclusory assertion of "no
18 permissible purpose" (see FAC ¶ 54), and, consequently, again fails to state a claim. See
19 Iqbal, 129 S.Ct. at 1950 (holding "legal conclusions" not supported by "factual allegations"
20 fail to state claim upon which relief can be granted).

21 With respect to Makreas' claim that Moore provided "erroneous and inaccurate
22 information" to a credit reporting agency (see FAC ¶ 61), the Court likewise finds Makreas
23 fails to state a claim upon which relief can be granted. Although the FCRA prohibits a
24 person or entity from providing to a credit reporting agency information the person or entity
25 "knows or has reasonable cause to believe is inaccurate," see 15 U.S.C. § 1681s-
26 2(a)(1)(A), no private cause of action for such a violation exists, see 15 U.S.C. § 1681s-
27 2(d) (providing § 1681s-2(a) "shall be enforced exclusively" by certain government
28 agencies).

1 Accordingly, the Second Cause of Action, as alleged against Moore, will be
 2 dismissed without leave to amend.

3 **3. Third Cause of Action**

4 In the Third Cause of Action, Makreas alleges Moore violated a section of the
 5 Rosenthal Act, specifically, § 1788.17 of the California Civil Code. Section 1788.17
 6 provides that, as a matter of California law, a debt collector must comply with 15 U.S.C.
 7 §§ 1692b - 1692j, which sections constitute the substantive provisions of the FDCPA. See
 8 Cal. Civil Code § 1788.17.

9 Third Cause of Action is, in part, derivative of the First Cause of Action. (See FAC
 10 ¶ 76.) For the reasons stated above with respect to the First Cause of Action, the Third
 11 Cause of Action is (1) subject to dismissal without leave to amend to the extent it is based
 12 on an alleged violation of § 1692g(a); (2) subject to dismissal with leave to amend to the
 13 extent it is based on alleged violations of § 1692e(11) occurring before Makreas received
 14 the above-referenced letter from Moore; and (3) is not subject to dismissal to the extent it is
 15 based on alleged violations of § 1692e(11) occurring after Makreas received said letter
 16 from Moore.

17 Additionally, the Third Cause of Action is based on a claim that Moore violated 15
 18 U.S.C. § 1692c(c) and § 1692g(b), and, in turn, the Rosenthal Act, by “continu[ing] to
 19 communicate with [Makreas]” and “continu[ing] collection efforts” after Makreas notified
 20 Moore that he disputed the validity of the debt. (See FAC ¶ 81.)

21 Pursuant to § 1692c(c), “[i]f a consumer notifies a debt collector in writing that the
 22 consumer refuses to pay a debt or that the consumer wishes the debt collector to cease
 23 further communication with the consumer, the debt collector shall not communicate further
 24 with the consumer.” See 15 U.S.C. § 1692c(c).⁶ Section 1692g(b) provides that if, within
 25 thirty days of receiving from the debt collector the written notice required by § 1692g(a), a
 26

27 ⁶The prohibition set forth in § 1692c(c) is subject to three exceptions, see id., none
 28 of which, in light of the factual allegations made in the FAC, appears applicable to the
 instant case.

1 consumer notifies the debt collector in writing that the debt is “disputed,” the debt collector
 2 “shall cease collection of the debt” until the debt collector “obtains verification of the debt.”
 3 See 15 U.S.C. § 1692g(b).

4 The Court previously dismissed such claim as alleged in the initial complaint, for the
 5 reason Makreas failed to allege any facts to support his conclusory assertion that Moore
 6 had taken any action regarding the debt on or after May 5, 2011, the date on which Moore
 7 allegedly received from Makreas notification that Makreas contested the validity of the debt.
 8 In the FAC, Makreas fails to cure the deficiency noted; Makreas, again, identifies no
 9 communication or collection attempt by Moore, or contact of any kind by Moore, occurring
 10 on or after May 5, 2011. (See FAC ¶¶ 32-34.)

11 Accordingly, to the extent the Third Cause of Action is based on a claim that Moore
 12 failed to comply with § 1692c(c) and/or § 1692g(b), the Third Cause of Action is subject to
 13 dismissal without leave to amend.

14 Finally, the Third Cause of Action is based on a claim that Moore, in July 2011,
 15 made an “entry into [Makreas’s] credit report” (see FAC ¶ 90), specifically, knowingly
 16 providing incorrect information about Makreas’ mailing address to “Experian and Equifax”
 17 (see FAC ¶¶ 38, 90). Assuming, arguendo, such factual allegation implicates a provision of
 18 the Rosenthal Act, any such claim is preempted by federal law. See 15 U.S.C.
 19 § 1681t(b)(1)(F) (providing states may not impose any “requirement or prohibition” with
 20 respect to “subject matter regulated by . . . section 1681s-2”); 15 U.S.C. § 1681s-2(a)(1)(A)
 21 (prohibiting any person from providing information to credit reporting agency “if the person
 22 knows or has reason to know that the information is inaccurate”).⁷

23 Accordingly, to the extent the Third Cause of Action is based on a claim Moore
 24 violated the Rosenthal Act by providing incorrect information to credit reporting agencies,
 25

26 ⁷As noted, under federal law, no private cause of action is provided for a violation of
 27 § 1681s-2(a)(1)(A). The “chief law enforcement officer of a State,” or his or her designee,
 28 may, however, bring an action alleging a violation of § 1681s-2(a)(1)(A) and may seek
 injunctive relief and/or damages on behalf of the residents of the State. See 15 U.S.C.
 § 1681s(c)(1).

1 the Third Cause of Action is subject to dismissal without leave to amend.

2 **4. Fourth Cause of Action**

3 In the Fourth Cause of Action, Makreas alleges Moore violated § 17200 of the
 4 California Business & Professions Code. As pleaded, the Fourth Cause of Action is
 5 derivative of the First, Second, and Third Causes of Action. (See FAC ¶¶ 92-93.) As relief
 6 for such violation(s), Makreas seeks “restitution.” (See FAC ¶¶ 93, 101-02.)

7 Moore argues Makreas has failed to allege any facts to support a finding that, even if
 8 a violation of § 17200 could be established, Moore would be entitled to restitution.

9 Under California law, an order of restitution, for purposes of § 17200, is an order
 10 “compelling a [§ 17200] defendant to return money obtained through an unfair business
 11 practice to those persons in interest from whom the property was taken, that is, to persons
 12 who had an ownership interest in the property.” See Korea Supply Co. v. Lockheed Martin
 13 Corp., 29 Cal. 4th 1134, 1144-45 (2003) (internal quotation and citation omitted).

14 As discussed above, each of Makreas’s claims is subject to dismissal, with the
 15 exception of his claim that certain of Moore’s voice messages did not contain the disclosure
 16 required by § 1692e(11), specifically, that Moore was a debt collector. The FAC includes
 17 no allegation to support a finding that, as a result of any failure by Moore to state it was a
 18 debt collector, Makreas gave Moore money or other property.

19 Accordingly, the Fourth Cause of Action, as alleged against Moore, is subject to
 20 dismissal.⁸

21 //

22 ⁸Although injunctive relief is, under some circumstances, available as a remedy for a
 23 violation of § 17200, see id. at 1144, Makreas does not seek an injunction as relief for the
 24 alleged failure by Moore to disclose in certain communications its identity as a debt
 25 collector. Moreover, no such relief appears possible, as Makreas does not allege facts to
 26 suggest there exists a “real or immediate threat” he will receive in the future
 27 communications from Moore in which Moore does not identify itself as a debt collector.
 28 See Los Angeles v. Lyons, 461 U.S. 95, 111 (1983) (holding, where plaintiff alleges past
 violation by defendant, plaintiff not entitled to injunctive relief in absence of showing, *inter*
alia, of “real or immediate threat” plaintiff will again be subjected to same violation by
 defendant). Indeed, as noted, Makreas alleges no facts to suggest he has received a
 “communication” from Moore since the date on which Moore received his letter requesting
 validation of the debt.

1 The Court will afford Makreas leave to amend to allege, if he can, facts, as opposed
 2 to legal conclusions, to support his allegation that he is entitled to restitution as a remedy
 3 for Moore's alleged violations of § 1692e(11).

4 **B. Citibank's Motion to Dismiss**

5 **1. Second Cause of Action⁹**

6 In the Second Cause of Action, Makreas alleges Citibank violated the FCRA by
 7 accessing his credit report for improper purposes and by providing incorrect information to
 8 a credit reporting agency.

9 Makreas alleges against Citibank the same FCRA violations as he alleges against
 10 Moore. For the reasons stated above with respect to Moore, such claims against Citibank
 11 likewise fail.

12 Accordingly, the Second Cause of Action is subject to dismissal without leave to
 13 amend.

14 **2. Third Cause of Action**

15 In the Third Cause of Action, Makreas alleges Citibank violated the Rosenthal Act by
 16 communicating with him and by attempting to collect the debt after he contested the validity
 17 of the debt. According to Makreas, such acts violated § 1692c(c) and § 1692g(b) of the
 18 FDCPA; as stated above, the Rosenthal Act prohibits, as a matter of state law, violations of
 19 the FDCPA.

20 As noted, pursuant to § 1692c(c), “[i]f a consumer notifies a debt collector in writing
 21 that the consumer refuses to pay a debt or that the consumer wishes the debt collector to
 22 cease further communication with the consumer, the debt collector shall not communicate
 23 further with the consumer,” see 15 U.S.C. § 1692c(c), and § 1692g(b) provides that if,
 24 within thirty days of receiving from the debt collector the written notice required by
 25 § 1692g(a), a consumer notifies the debt collector in writing that the debt is “disputed,” the
 26 debt collector “shall cease collection of the debt” until the debt collector “obtains verification

27
 28 ⁹The First Cause of Action is not alleged as against Citibank.

1 of the debt," see 15 U.S.C. § 1692g(b).

2 As Citibank correctly points out, Markeas fails to allege any facts to support his
 3 conclusory assertions that Citibank violated § 1692c(c) and § 1692g(b). In particular,
 4 Makreas pleads no facts to support his conclusory assertion that Citibank has ever sent a
 5 "communication" to Makreas, see 15 U.S.C. § 1692a(2), i.e., that Citibank has conveyed to
 6 Makreas "information regarding a debt directly or indirectly," see 15 U.S.C. § 1692a(2), let
 7 alone facts to support his conclusory assertion that Citibank "continued" to send
 8 communications after Makreas advised Citibank he refused to pay a debt (see FAC ¶ 81a);
 9 consequently, Makreas fails to state a claim that Citibank violated § 1692c(c). Further,
 10 Makreas pleads no facts to support his conclusory assertion that Citibank engaged in
 11 collection activities, let alone facts to support his conclusory assertion that Citibank
 12 "continued" to engage in collection activities after Makreas allegedly disputed the debt (see
 13 FAC ¶ 81b); consequently, Makreas fails to state a claim that Citibank violated
 14 § 1692g(b).¹⁰

15 Makreas also alleges Citibank violated the Rosenthal Act by making a knowingly
 16 false entry in his credit report, specifically, by providing incorrect information about
 17 Makreas's mailing address to Experian and Equifax. (See FAC ¶¶ 38, 90). As discussed
 18 above, even assuming such factual allegations implicate a provision of the Rosenthal Act,
 19 any such claim under the Rosenthal Act is preempted by federal law.

20 Accordingly, the Third Cause of Action, as alleged against Citibank, is subject to
 21 dismissal.

22 The Court will afford Makreas leave to amend to allege, if he can, any facts, as
 23 opposed to legal conclusions, to support his allegation that Citibank violated the Rosenthal
 24 //

25
 26 ¹⁰As the Court noted in its order dismissing certain claims alleged in Makreas's initial
 27 complaint, to the extent Makreas intends to base a claim against Citibank on actions taken
 28 by another entity, Makreas must allege sufficient facts, as opposed to legal conclusions, to
 support a finding that the other entity acted on behalf of Citibank. No such facts are
 alleged in the FAC.

¹¹ Act by failing to comply with 15 U.S.C. § 1692c(c) and/or § 1692g(b).

3. Fourth Cause of Action

In the Fourth Cause of Action, Makreas alleges Citibank violated § 17200 of the California Business & Professions Code. As pleaded, the Fourth Cause of Action, as alleged against Citibank, is derivative of the Second and Third Causes of Action. (See FAC ¶¶ 92-93.)

As discussed above, the Second and Third Causes of Action are subject to dismissal, and, consequently, the Fourth Cause of Action, as alleged against Citibank, likewise is subject to dismissal.

10 Further, as Citibank correctly argues, Makreas fails to allege any facts to support a
11 finding that, as a result of any alleged violation of § 17200, he paid Citibank any money or
12 property. Consequently, to the extent the Fourth Cause of Action includes a claim for
13 restitution, the Fourth Cause of Action is subject to dismissal for this additional reason.

14 The Court will afford Makreas leave to amend to allege, if he can, any facts, as
15 opposed legal conclusions, to support his claim against Citibank for restitution.

CONCLUSION

17 || For the reasons stated above:

18 1. Moore's motion to dismiss is hereby GRANTED in part and DENIED in part as
19 follows:

20 a. To the extent the motion seeks dismissal of the First Cause of Action, the
21 motion is (1) GRANTED as to the claim Moore violated § 1692g(a), and such claim is
22 DISMISSED without leave to amend; (2) GRANTED as to the claim Moore violated
23 § 1692e(11) prior to the date on which Makreas received from Moore the letter stating
24 Makreas owed Moore a debt, and such claim is DISMISSED with leave to amend; and
25 (3) DENIED as to the claim Moore violated § 1692e(11) after Makreas received said letter

²⁷ ¹¹No such leave will be afforded to the extent the Third Cause of Action is based on
²⁸ a claim that Citibank violated the Rosenthal Act by providing false information to credit reporting agencies.

1 from Moore.

2 b. To the extent the motion seeks dismissal of the Second Cause of Action,
3 the motion is GRANTED, and the Second Cause of Action, as alleged against Moore, is
4 DISMISSED without leave to amend.

5 c. To the extent the motion seeks dismissal of the Third Cause of Action, the
6 motion is (1) GRANTED as to the claim Moore violated § 1692g(a), and such claim is
7 DISMISSED without leave to amend; (2) GRANTED as to the claim Moore violated
8 § 1692e(11) prior to the date on which Makreas received from Moore the letter stating
9 Makreas owed Moore a debt, and such claim is DISMISSED with leave to amend;
10 (3) DENIED as to the claim Moore violated § 1692e(11) after Makreas received said letter
11 from Moore; (4) GRANTED as to the claim Moore failed to comply with § 1692c(c) and/or
12 § 1692g(b), and such claim is DISMISSED without leave to amend; and (5) GRANTED as
13 to the claim Moore provided false information to credit reporting agencies, and such claim
14 is DISMISSED without leave to amend.

15 d. To the extent the motion seeks dismissal of the Fourth Cause of Action,
16 the motion is GRANTED, and the Fourth Cause of Action, as alleged against Moore, is
17 DISMISSED with leave to amend.

18 2. Citibank's motion to dismiss is hereby GRANTED as follows:

19 a. To the extent the motion seeks dismissal of the Second Cause of Action,
20 the motion is GRANTED, and the Second Cause of Action, as alleged against Citibank, is
21 DISMISSED without leave to amend.

22 b. To the extent the motion seeks dismissal of the Third Cause of Action, the
23 motion is (1) GRANTED as to the claim Citibank violated the Rosenthal Act by failing to
24 comply with § 1692c(c) and § 1692g(b), and such claim is DISMISSED with leave to
25 amend; and (2) GRANTED as to the claim Citibank provided false information to credit
26 reporting agencies, and such claim is DISMISSED without leave to amend.

27 c. To the extent the motion seeks dismissal of the Fourth Cause of Action,
28 the motion is GRANTED, and the Fourth Cause of Action, as alleged against Citibank, is

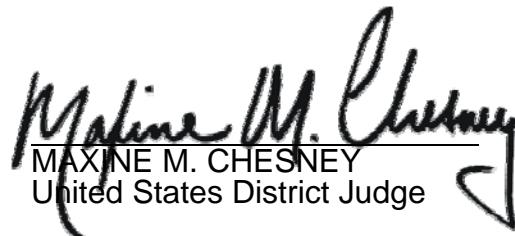
1 DISMISSED with leave to amend.

2 3. If Makreas wishes to file a Second Amended Complaint to amend the First Cause
3 of Action and Third Causes of Action, as alleged against Moore and solely to correct the
4 deficiencies identified above, and/or to amend the Third and Fourth Causes of Action, as
5 alleged against Citibank and solely to correct the deficiencies identified above, Makreas
6 shall file a Second Amended Complaint no later than October 28, 2011.¹² If Makreas does
7 not file a Second Amended Complaint on or before October 28, 2011, the instant action will
8 proceed on the remaining claim in the First Amended Complaint, specifically, the remaining
9 portion of his § 1692e(11) claim against Moore.

10 4. The Case Management Conference is hereby CONTINUED from October 28,
11 2011 to December 9, 2011, at 10:30 a.m. A Joint Case Management Statement shall be
12 filed no later than December 2, 2011.

13 **IT IS SO ORDERED.**

14
15 Dated: October 11, 2011
16


MAXINE M. CHESNEY
United States District Judge

27 _____
28 ¹²Makreas may not otherwise amend the First Amended Complaint without first
obtaining leave of court. See Fed. R. Civ. P. 15(a)(2).